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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 EQUAL EMPLOYMENT OPPORTUNITY
8 COMMISSION,

9 Plaintiff,

10 v.

11 LOWE'S HIW, INC.,

12 Defendant.

13 AMBER FASOLINO, CHESTER DAVISON,
14 JEREMIAH HARRINGTON, and JOHN
15 MCDOWELL,

16 Plaintiffs,

17 v.

18 LOWE'S HIW, INC. d/b/a LOWE'S HOME
19 IMPROVEMENT WAREHOUSE, INC.; JOHN
20 MILLS and JANE DOE MILLS, and the marital
21 community comprised thereof;

22 Defendants.

23 JULIE ANDREWS,

24 Plaintiff,

25 v.

26 LOWE'S HIW, INC. d/b/a LOWE'S HOME
IMPROVEMENT WAREHOUSE, INC.; and
JOHN MILLS,

Defendants.

CASE NO. C08-0331-JCC

Consolidated with C08-5053

ORDER

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2 This matter comes before the Court on Defendant John Mills' FRCP 30(a)(2) Motion for Leave
3 to Depose Plaintiffs Davison and Harrington (Dkt. No. 159), the Responses in opposition by Intervenor-
4 Plaintiffs (Dkt. No. 161) and the Equal Opportunity Employment Commission ("EEOC") (Dkt. No.
5 163), and Defendant's Reply (Dkt. No. 168). The Court has carefully considered these papers and their
6 supporting declarations and exhibits, and has determined that oral argument is not necessary. The Court
7 GRANTS the motion and finds and rules as follows.

8 **I. BACKGROUND**

9 The Court has recounted the background facts of this dispute numerous times in previous Orders
10 but will repeat some of those facts here for the reader's convenience. On February 25, 2008, Plaintiff
11 EEOC initiated this lawsuit against Defendant Lowe's, alleging violations of Title VII of the Civil
12 Rights Act of 1964 and Title I of the Civil Rights Act of 1991. (Compl. (Dkt. No. 1).) Specifically, the
13 EEOC alleges that starting in 2006, Defendant subjected its former employees Jeremiah Harrington,
14 Chester Davison, and Amber Fasolino to sexual harassment at its Longview, Washington facility by
15 maintaining a hostile work environment, and retaliated against them after they complained of the
16 harassment. (*Id.* at 2–3.) Since the EEOC's filing of the Complaint, Harrington, Davison, and Fasolino
17 intervened in the lawsuit and added claims against Defendant under the Washington Law Against
18 Discrimination (WLAD), WASH. REV. CODE Ch. 49.60, and against Store Manager John Mills. In
19 addition, the Court ordered consolidation of the case with Case No. C08-5053-BHS, *Andrews v. Lowe's*
20 *HIW, Inc.*, which was proceeding in the Western District of Washington at Tacoma, in which Plaintiff
21 Julie Andrews, another former employee at the Longview store, alleges that she was "harassed,
22 discriminated against, retaliated against, and [was subject to] adverse employment actions . . . including
23 but not limited to constructive[] discharg[e]" on the basis of gender. (Andrews Second Am. Compl. ¶¶
24 15–16 (C08-5053, Dkt. No. 36).)

25 Pertinent to the instant motion, Harrington and Davison "allege that as store manager, John Mills

1 allowed or permitted a discriminatory work environment in which managers and co-workers made
2 comments directed to Harrington and Davison of a sexual nature.” (Mot. 3 (Dkt. No. 159).) Co-
3 Defendant Lowe’s HIW, Inc. (“Lowe’s”) deposed Harrington on December 18, 2008. (*Id.* at 4.) The
4 deposition lasted about seven hours. (*Id.* at 4 n.10.) After Lowe’s finished examining the deponent,
5 Defendant Mills’ counsel was permitted to ask questions of Harrington for about fifteen minutes, at
6 which point Plaintiffs’ counsel pointed out that the seven hours allotted for a deposition under the
7 Federal Rules had expired. (*Id.* at 4; Harrington Dep. 246:2–247:23 (Dkt. No. 160 at 19).) Lowe’s
8 deposed Davison the following day, December 19, 2008, again, for approximately seven hours. (Mot. 4
9 (Dkt. No. 159).) This time, counsel for Mills had an opportunity of only seven minutes to ask questions
10 after Lowe’s completed its questioning before the time allotted under the Federal Rules expired. (*Id.* at
11 5.) After some discussions between counsel for Plaintiffs, the EEOC, and Mills, counsel were unable to
12 come to an agreement as to whether a second day of depositions of Harrington and Davison would be
13 scheduled. (*Id.* at 6.) Thus, in the instant motion, Mills and his marital community ask the Court to
14 permit them leave to depose Harrington and Davison for an additional three hours each. (*Id.* at 2.)

15 **II. APPLICABLE STANDARD**

16 The Federal Rules provide that:

17 Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7
18 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to
19 fairly examine the deponent or if the deponent, another person, or any other circumstance
20 impedes or delays the examination.

21 FED. R. CIV. P. 30(d)(1). The Court, however, must limit the length of depositions if it determines that:

22 (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained
23 from some other source that is more convenient, less burdensome, or less expensive;

24 (ii) the party seeking discovery has had ample opportunity to obtain the information by
25 discovery in the action; or

26 (iii) the burden or expense of the proposed discovery outweighs its likely benefit,
considering the needs of the case, the amount in controversy, the parties’ resources, the
importance of the issues at stake in the action, and the importance of the discovery in
resolving the issues.

1 FED. R. CIV. P. 26(b)(2)(C). Consistent with the Federal Rules, this Court’s Order Regarding Discovery
2 and Depositions (Dkt. No. 4) instructs counsel that “[i]f there are multiple parties, each side should
3 ordinarily designate one attorney to conduct the main examination of the deponent, and any questioning
4 by other counsel on that side should be limited to matters not previously covered.”

5 **III. ANALYSIS**

6 Mills emphasizes that Lowe’s and Mills do not share the same position vis-à-vis Plaintiffs’
7 allegations; in fact, their interests are potentially adverse to one another. (Mot. 9 (Dkt. No. 159).) As
8 such, Mills argues, while Lowe’s questioned Harrington and Davison about many areas of common
9 interest, Mills “is only interested in completing [his] examination on those subject areas that are unique
10 to the claims asserted against Mills personally.” (*Id.*)

11 Plaintiffs object to the additional deposition time because of the added expense and
12 inconvenience and argue that they could have been avoided with better planning between Lowe’s and
13 Mills’ counsel. (Pls.’ Resp. 1 (Dkt. No. 161).) They also contend that the additional deposition time
14 would be duplicative and suggest that Mills attempt to glean the necessary discovery through written
15 interrogatories instead. (*Id.* at 4–5.) The EEOC also cites the inconvenience of travel and the potentially
16 duplicative nature of what might be achieved by Mills if the request for more deposition time is granted.
17 (EEOC Resp. 1–2 (Dkt. No. 163).)

18 Written interrogatories, which are drafted by counsel, are not a substitute for the opportunity to
19 receive information first-hand from a deponent. The Court is persuaded that, given the seriousness of the
20 allegations against Mills and the potential damage to his personal assets and his marital community that
21 this litigation threatens, Mills should be permitted some additional deposition time to fairly examine
22 Harrington and Davison on matters not previously covered by Lowe’s. The additional time will be
23 limited to three hours each. The depositions must be scheduled at a time and location reasonably
24 convenient to Harrington and Davison. Counsel for Mills is directed to be cognizant of her obligation to
25 limit her questioning to matters not previously covered by Lowe’s counsel. The Court notes that Mills

1 requested that the additional deposition times take place before Mills is deposed by Plaintiffs. (Mot. 2
2 (Dkt. No. 159).) Mills has pointed to no authority to support this request and, given that it is opposed by
3 Plaintiffs and the EEOC, the Court declines to impose this condition.

4 **IV. CONCLUSION**

5 The Court GRANTS Defendant John Mills' FRCP 30(a)(2) Motion for Leave to Depose
6 Plaintiffs Davis and Harrington (Dkt. No. 159) consistent with the foregoing.

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8 DATED this 27th day of March, 2009.

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12 John C. Coughenour
13 UNITED STATES DISTRICT JUDGE
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